

From: Donovan Warren
To: Microsoft ATR
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Subject: Microsoft Settlement

I have major problems with the settlement, as designed:

- It does not address the core issue: that Microsoft is a monopoly in the PC Operating System (OS) environment, and is illegally extending that monopoly by integrating applications into the operating system. This MUST BE prevented AT ALL COSTS. For example, Microsoft is currently shipping Windows Media Player as a built-in, embedded application installed as part of the Operating System installation of Windows XP. It is separable from the OS, clearly, because it can be downloaded for other Operating Systems; for example, you can download Windows Media Player for Macintosh, Windows 2000, and Windows ME. This is clear evidence that the application is not a core part of an operating system. By embedding this application into the OS, they are attempting to extend their monopoly on the OS into the streaming media server business. The player is free (as are all competing players; Real.COM and Apple both make competing players, but none of them can read the other's formatted files), and so the streaming media player market is not in danger. By embedding the application into the OS, however, Microsoft is creating demand for its Server application which does not now exist. The Streaming Server software is not free, and neither is any competing server software. In the process of embedding the player, Microsoft will artificially create demand for the Server, in an arena that they do not currently have a monopoly in, and in the process of creating demand for the server, will muscle out the current market leader, Real. Windows Media Player is just the current example of this activity. Next, Microsoft will embed desktop video applications into the OS, in an arena where competing products are not free. Some of the competing desktop video applications are not even available for Windows (Apple's iMovie and iDVD applications, for example), and embedding these applications into the OS will serve to increase Microsoft's already monopolistic hold on the OS market by decreasing demand for competing operating systems.

- It does not punish Microsoft for its transgressions in a way that Microsoft will understand. Microsoft has proven, time and time again, that they are incapable of listening to reason, of facing up to their own failings, and of understanding when they have done wrong. Much like a recalcitrant child, sometimes the only viable option is to spank them. What this settlement proposes to do is put Microsoft into a "timeout" almost exactly like the "timeout" they received in 1995. Didn't they violate that consent decree? Isn't that why we're here? It is blatantly obvious that "timeout" doesn't work with Microsoft. The Department of Justice needs to reconsider this approach, and seriously evaluate the spanking method of punishment and lesson-teaching.

- It fails to send a clear message to future monopolies: if you illegally

extend your monopoly power by requiring bundled sales, or by bundling your own products in markets where you do not hold monopoly power in order to increase your market share in those markets, you will be punished ... or, not. You might be able to get away with it, or maybe you'll get punished severely. Let's remember why monopolies are bad, in general: companies with monopoly power in a marketplace can create barriers to entry, can artificially inflate or deflate market pricing on a whim, and can eradicate whole companies in markets based solely on their monopoly position. Monopolies can be healthy for a time, as they can create some stability in a marketplace. What it is never permissible for a company with a market monopoly to do is to leverage that monopoly power to create marketshare in another market, especially when creating marketshare results in another market monopoly for said company, as it has or is coming close to having done in the Internet Browser space in the immediate case.

For these reasons, the Department of Justice needs to reevaluate why it offered this emasculated remedy, reconsider much more stringent penalties, and offer those more stringent penalties to the court.

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